



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

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| Policy No. DOC 1.3.55 | Subject: CRIMINAL CONVICTION IN EMPLOYMENT |
| Chapter 1: ADMINISTRATION AND MANAGEMENT | Page 1 of 5 and Attachment |
| Section 3: Human Resources | Effective Date: 01/03/2017 |
| Signature: /s/ Reginald D. Michael | Revised: 08/28/2017 |

I. POLICY

The Department of Corrections conducts criminal background checks as a condition of employment. Evidence of a conviction may not automatically disqualify an applicant or an employee from continued employment. If an individual has a criminal history, the Department will consider the following factors before extending an offer of employment or continuing employment: the nature and gravity of the offense; the time since the completion of the sentence; and the nature of the job held or sought along with the relatedness of the conviction.

II. APPLICABILITY

All divisions, facilities and programs Department-owned.

III. DEFINITIONS

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management.

Brady Act & Lautenberg Amendment - Any person who has been convicted of a misdemeanor crime of domestic violence or is the subject of a court order of protection for “an intimate partner or child of such intimate partner” cannot lawfully possess a firearm or ammunition (*Title 18, U.S.C., Section 922(g) (91)*).

Criminal Conduct – A charge or conviction of a violation of city, county, state or federal law including all felonies and serious misdemeanors, including but not limited to: assault, sexual assault, traffic violations, i.e., hit and run, driving under the influence (DUI), reckless driving, or other violations by staff that could result in the imposition of a jail sentence and/or suspension or revocation of the violator's driver license.

Department Employee – A person employed by the Department of Corrections who has attained permanent status or is eligible to attain permanent status, as provided in 2-18-601, MCA; volunteers, interns, temporary and short term workers; this term does not include service providers.

Facility/Program – Refers to any division, prison, secure care correctional facility, correctional or training program, or community-based program under Department jurisdiction or contract. This term includes the facility building or residence, including property and land owned or leased and operated by the Department.

POST Certified – Refers to Peace Officer Standards & Training Certified positions as defined in 44-4-401 MCA.

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Service Providers – This term includes contracted persons or other vendors providing service whose assignment is primarily on Department premises, e.g. facility or program office.

IV. DEPARTMENT DIRECTIVES

A. General Requirements

1. The Department is committed to protecting the safety of all employees and other individuals in our workplace, as well as state assets.
2. The Department will comply with all federal anti-discrimination laws in all employee selection processes.
3. The Department recognizes the important role obtaining meaningful employment plays in the successful reintegration of offenders into the community.
4. Consideration of criminal background information will be limited to felony convictions except for certain specified positions where other misdemeanor convictions may be significant such as partner family member assault (PFMA) for POST certified positions, motor vehicle offenses for persons whose job duties require the operation of motor vehicles, or abuse/assault for individuals working with offenders. The Office of Human Resources (OHR) will maintain a statement of those positions for which misdemeanor convictions are considered relevant, and a description of those convictions.
5. The Department's correctional officers and probation and parole officers, as well as their chain of command, are subject to POST certification requirements, the Brady Act and Lautenberg Amendment. Candidates who have been convicted of any felony or a misdemeanor crime of domestic violence or were issued a court order of protection are not qualified for POST certified positions.
6. For positions which may have contact with offenders the Department will not hire, enlist the services of or continue employment of an employee or service provider who:
 - a. has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;
 - b. has been convicted of engaging in or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse;
 - c. has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (b) of this section; or
 - d. has contact with youth and is listed on the DPHHS child abuse registry.
7. Employees have a continuing affirmative duty to disclose any of the misconduct listed in Section IV.A.6.
8. The Department will consider any incidents where an individual engaged in sexual harassment in determining whether to hire or promote, or to enlist the services of anyone, who may have contact with offenders.

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9. OHR will conduct criminal background checks on employees and service providers who may have contact with offenders, and a DPHHS child abuse registry search for employees or service providers who may have contact with youth, upon hire, transfer, promotion, and every five years to check for new convictions since the last background check.
10. All employees who may have contact with offenders must complete the [Policy Acknowledgement and Disclosure Form](#) in written applications or interviews for hiring and promotion and annually. The form will be submitted to OHR.
11. Employees must self-report criminal charges and convictions within five days to their immediate supervisor and OHR.
12. If an administrator or supervisor has reason to believe a current employee may have been involved in criminal conduct, he or she will notify OHR immediately.
13. The Department will abide by the Fair Credit Reporting Act, Montana human rights statutes and all applicable laws to ensure individuals are not discriminated against.

B. Criminal Background Checks in Hiring

1. Criminal background checks will be conducted on finalists for vacant positions, as identified in the vacancy announcement, and on all individuals assigned to work at the Department by service providers.
2. If the criminal background check indicates there are no convictions, OHR will inform the hiring manager that the candidate is eligible for employment.
3. If the criminal background check indicates any convictions, OHR will notify the administrator and hiring manager, and will follow section (D) this policy.

C. Convictions During Employment

1. Criminal background checks are conducted every five years on existing employees and service providers in accordance with the *Prison Rape Elimination Act of 2003*.
2. The Department may further review an employee's criminal background during their employment at any time for due cause.
3. If the criminal background check indicates any conviction, OHR will then determine whether the conviction was previously disclosed either during the employee's initial hiring process or subsequently to their immediate supervisor, or whether the conviction presents new information not previously known by the Department. If the conviction represents new information, OHR will notify the administrator and follow section (D) of this policy.
4. In all cases the Department will take appropriate action based on the information shared by the employee, law enforcement, and the courts relative to the position the employee currently holds.

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D. Evaluation of Criminal Record History

1. If a pre-employment criminal background check reveals any conviction which the individual disclosed in the recruitment process, OHR will consider the factors for each conviction, including any additional information that the individual provides before the offer of employment is confirmed or withdrawn. In consultation, OHR, the Department's legal counsel, the administrator supervising the position and hiring manager will determine a course of action. The existence of a conviction does not automatically disqualify an individual from employment.
2. If an unreported conviction for an employee or applicant is discovered in a criminal background check, unless the individual proves that the report is in error, the offer of employment may be withdrawn, or, if employed the employee may be subject to formal discipline, up to and including termination from employment. OHR will consider the factors for each conviction, including any additional information that the individual provides. In consultation, OHR, the Department's legal counsel, the administrator supervising the position and hiring manager will determine a course of action.
3. Factors to be considered when reviewing convictions are:
 - a. the nature and gravity of the offense;
 - b. the time since the completion of the sentence except for POST certified positions or for positions which may have contact with offenders in compliance with the *Prison Rape Elimination Act of 2003* standards; and
 - c. the nature of the job held or sought and the relatedness of the charges or conviction to the duties and responsibilities of the position.
4. Any decision to reject an applicant or formally discipline an employee up to and including termination with reported, unreported, or new convictions is solely at the discretion of the Department.

E. Confidentiality

1. All information pertaining to an employee's or applicant's criminal conviction history is confidential communication. Access to this information is limited to those who have a legitimate need to know and will only be disseminated in conformity with relevant laws and Department policy. Records gathered as a result of a criminal background check will be kept by the Office of Human Resources. These records will include:
 - a. Authorization Form
 - b. Information collected from the check
 - c. Analysis and decision regarding any convictions
 - d. Correspondence related to criminal background check
2. The records will be securely maintained during the duration of employment and in accordance with state retention policy.
3. The Department will provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom the employee has applied to work.

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V. CLOSING

Provisions of this policy not required by statute will be followed unless the provisions conflict with negotiated labor contracts, which will take precedence to the extent possible.

Questions concerning this policy should be directed to the Department's Office of Human Resources.

VI. REFERENCES

- A. 53-1-203, MCA; 44-4-401 MCA
- B. 28 CFR Part 115, Prison Rape Elimination Act of 2003
- C. DOC Policy 1.1.17 Prison Rape Elimination Act of 2003 (PREA)

VI. ATTACHMENTS

[Policy Acknowledgement and Disclosure Form](#)